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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LUISA CRUZ,

Plaintiff,

v.

MOHAMMAD M. RAHMAN, M.D.,
OZONE PARK MEDICAL CARE, PLLC,
SIDNEY HILLMAN/PHILLIPS FAMILY
PRACTICE, and THE INSTITUTE FOR FAMILY
HEALTH,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JAN 10 2017 ★

BROOKLYN OFFICE
Civil Action No.
17-CV-4462

(Ross, J.)
(Kuo, M.J.)

**STIPULATION AND ORDER OF PARTIAL DISMISSAL,
MODIFICATION OF CAPTION AND REMAND**

WHEREAS, plaintiff commenced this action on April 11, 2017 by filing a Verified Complaint in the Supreme Court of the State of New York, County of Kings, under Index No. 507192/2017, asserting, *inter alia*, claims relating to the alleged negligence in medical treatment provided to Luisa Cruz and naming as defendants Mohammad M. Rahman, M.D., Ozone Park Medical Care, PLLC, Sidney Hillman/Phillips Family Practice, and The Institute for Family Health;

WHEREAS, the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2401, 2671 *et seq.*, allows for the United States of America to substitute itself as party defendant when a federal employee was acting within the scope of employment at the time the alleged acts or omissions took place, 28 U.S.C. § 2679(d)(1);

WHEREAS, at all relevant times articulated in the Verified Complaint, Sidney Hillman/Phillips Family Practice and The Institute for Family Health were federally

supported health centers and were deemed by the Department of Health and Human Services, pursuant to 42 U.S.C. § 233(g)-(h), to be eligible for coverage under the FTCA;

WHEREAS, as federally supported health centers acting within the course and scope of their employment, defendants Sidney Hillman/Phillips Family Practice and The Institute for Family Health are deemed to be Public Health Service employees of the United States of America for purposes of the FTCA, in accordance with 42 U.S.C. § 233(g)-(h) as amended;

WHEREAS, on July 28, 2017, the United States of America removed this action to the United States District Court for the Eastern District of New York, on the grounds that Sidney Hillman/Phillips Family Practice and The Institute for Family Health were acting within the course and scope of their employment as deemed federal employees at the time of the events alleged in the Verified Complaint;

WHEREAS, on July 28, 2017, the United States of America duly filed a certification and notice of substitution attesting to Sidney Hillman/Phillips Family Practice and The Institute for Family Health's status as deemed federal employees for purposes of the events alleged in the Verified Complaint, and certifying that they were federally supported health centers and were deemed by the Department of Health and Human Services, pursuant to 42 U.S.C. § 233(g), to be eligible for coverage under the FTCA, and that in consequence, the United States of America was substituted as the proper party-defendant in place of these defendants;

WHEREAS, under the FTCA, a party suing for the alleged acts or omissions of a federally-deemed employee while acting in the course and scope of employment is required first to present his or her claim to the appropriate federal agency, and is precluded

from bringing suit until his or her claim has been finally denied by the agency in writing or the agency has failed to adjudicate the claim within six months of filing, 28 U.S.C. § 2675(a);

WHEREAS, on or about May 26, 2017, after instituting this action, plaintiff submitted an administrative claim to the Department of Health and Human Services;

WHEREAS, on or about September 29, 2017, the administrative claim was finally denied by the agency;

WHEREAS, the parties now wish to provide for the dismissal of this action as against the United States of America, Sidney Hillman/Phillips Family Practice and The Institute for Family Health.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between plaintiff and the United States of America, by and through their respective undersigned counsel, and it is ordered by the Court that:

1. The foregoing recitals are hereby incorporated by reference and adopted by the parties as if fully set forth herein.

2. The United States of America has been substituted as the party-defendant in place of defendants Sidney Hillman/Phillips Family Practice and The Institute for Family Health.

3. Pursuant to Federal Rule of Civil Procedure 41(a)(2), the above-captioned action shall be and hereby is dismissed with prejudice as against Sidney Hillman/Phillips Family Practice and The Institute for Family Health, and such dismissal is without costs to any party as against the others.

4. Pursuant to Federal Rule of Civil Procedure 41(a)(2), the above-

captioned action shall be and hereby is dismissed without prejudice as against the UNITED STATES OF AMERICA, and such dismissal is without costs, expenses, fees or disbursement to any party as against the others.

5. The caption in this action shall be changed to the following:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LUISA CRUZ,

Civil Action No.
17-CV-4462

Plaintiff,

v.

MOHAMMAD M. RAHMAN, M.D., and
OZONE PARK MEDICAL CARE, PLLC,

Defendants.

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6. Nothing in this Stipulation and Order shall in any way affect, abrogate, impair, or otherwise resolve plaintiff's claims in this action against defendants Mohammad M. Rahman, M.D. and Ozone Park Medical Care, PLLC.

7. All remaining claims in this action by plaintiff against defendants Mohammad M. Rahman, M.D. and Ozone Park Medical Care, PLLC are hereby remanded to the New York State Supreme Court, Kings County.

8. The Clerk of the Court shall enter judgment in this case dismissing the action against defendants Sidney Hillman/Phillips Family Practice and The Institute for Family Health, with prejudice, and against the United States of America, without prejudice, and shall remand the remaining claims to the New York State Supreme

Court, Kings County.

Dated: January 5, 2018

DIEFENBACH PLLC
55 Broad Street, 14th Floor
New York, New York 10004
Attorneys for Plaintiff

By:

/s/Gordon Price Diefenbach
GORDON PRICE DIEFENBACH, ESQ.
(212) 981-2233

Dated: January 5, 2018

RICHARD P. DONOGHUE
United States Attorney for the
Eastern District of New York
Attorney for the
United States of America
271 Cadman Plaza East
Brooklyn, New York 11201

By:

/s/Rachel G. Balaban
RACHEL G. BALABAN
Assistant U.S. Attorney
(718) 254-6028

SO ORDERED in Brooklyn, New York,
this 5th day of January, 2018:

/s/(ARR)
HONORABLE ALLYNE R. ROSS
UNITED STATES DISTRICT JUDGE

cc: By ECF
Gerasimia Stathatos, Esq.
VIGORITO, BARKER, PORTER
& PATTERSON, LLP
115 E. Stevens Avenue, Suite 206
Valhalla, New York 10595
Attorneys for Defendants
MOHAMMAD M. RAHMAN, M.D. and
OZONE PARK MEDICAL CARE, PLLC